(Question read.)

The Court: I suggest, before you go to that, Mr. MacMahon, that, now that they are in evidence, the witness tell us to whom they were drawn.

Q. To whom were these checks drawn, Mr. Murphy? A. Mrs. Loretta Costello.

(375) Q. Now, would you tell us what those checks were for?

Mr. Fennelly: If the witness knows, your Honor.

The Court: Do you know?

The Witness: I can tell from the books that they were charged to the drawing account.

The Court: Very well.

Q. Charged to the drawing account, did you say? A. That is right.

Q. And for what period? A. This check covers January '46.

Q. What are you referring to? A. 122-G.

The Court: When you say "This check," give us the number.

Q. Perhaps, Mr. Murphy, I could ask you the question this way: Are all of them subsequent to the period January 1, 1946? A. Yes.

Q. And do they represent all of Mrs. Costello's drawings subsequent to the period January 1, 1946? A. Yes.

Q. Mr. Murphy, to which drawing—whose drawing account were Exhibits 122-A through G charged? A. Mrs. Loretta Costello.

(Marked Government's Exhibit 123 for identification.)

(376) Q. I show you Government's Exhibit 123 for identification and ask you to identify it.

The Court: That does not mean giving us any of the contents of it, Mr. Murphy.

A. That is the daily report dated March 8, 1947 of Crescent Music Company.

Q. Now, referring to 123 for identification, did you receive the materials in 123 for identification at your office? A. Yes.

Q. And how often did you receive materials of this type at your office? A. They came at various times, every other day or maybe a week.

Q. And did you prepare the regular books of accounts of Crescent Music Company and Crescent Music Company, Inc. from the materials shown on 123 for identification? A. From that and similar material, plus the checks drawn.

Mr. MacMahon: At this time, your Honor, I offer Exhibit 123 in evidence.

The Court: We will take a short recess and you may look at them in the meantime, Mr. Fennelly.

Mr. Fennelly: I beg your pardon?

The Court: We will let the jury have a recess now and you can go ahead and look at those.

(Short recess.)

(377) Mr. Fennelly: I object to Exhibit 123 for identification on the ground that it is irrelevant and immaterial.

The Court: I will hear you on that, Mr. MacMahon. The relevance is not quite clear to me now.

Mr. MacMahon: Your Honor, these are daily records from which the entries made in the books

were entered, and on the basis of those entries the income tax returns for this enterprise, Crescent Music Company, Inc. and Crescent Music Company partnerships were prepared from the entries that are based initially on these original records that were kept in the regular course of its business.

The Court: Yes. But do you claim that the records were improperly kept or that the income of that corporation or partnership was improperly reported?

Mr. MacMahon: Your Honor, I simply want to show the types of records that were kept here as a—I have a probative purpose in it which I will disclose at the appropriate time, your Honor.

Mr. Fennelly: I also point out that as to Mrs. Costello—

The Court: I didn't hear you.

Mr. Fennelly: I say, I might also point out (378) that even as to Mrs. Costello there is no evidence that she was either an officer or director, and records of that nature would not be binding or admissible as against her.

The Court: I am inclined to sustain the objection at this time as to those records. If it becomes clear later on, as you indicated it will, then you may reoffer them at that time. You have them marked for identification now. They may be reoffered then. It seems to me that at the present time they are irrelevant.

Mr. MacMahon: Mrs. Costello is a partner on the books and records of this company.

The Court: Yes.

Mr. MacMahon: These are records from which she prepares her income—

The Court: I have allowed you to develop from

this witness that that company's books show certain profits that were reported and that certain payments, in those last checks, were made to Mrs. Costello, but now, those, I take it, are simply in support of the accuracy of the books or, perhaps, the inaccuracy. It isn't clear to me just what the purpose of offering (379) them is. If it is simply to sustain the books, I think that is not necessary at this time.

Q. Mr. Murphy, did you prepare and sign the Crescent Amusement Company's income tax returns? A. I did, Crescent Music Company partnership returns, and the Crescent Music Company, Inc. returns.

Q. Would you speak up a little bit, Mr. Murphy? A. I said I did sign the partnership returns and the corporation returns.

The Court: Am I correct, Mr. Murphy, that your association with the partnership began as of September, 1944, or were you connected with them prior?

The Witness: I did the accounting prior to that, July, 1943.

The Court: July, 1943. Very well. So when you say you prepared the returns, you are talking of the period from July, 1943, up until the end of the partnership, which was sometime in 1948.

The Witness: That is right.

The Court: Very well.

(Marked Government's Exhibits 124, 125 and 126 for identification, respectively.)

The Court: I think, in overruling that last objection, I put it on the ground they were irrelevant.

I meant to say immaterial. I suppose anything (380) connected with these books is in some degree relevant, but I think they are immaterial, with the right reserved to you, Mr. MacMahon, at any time later to reoffer them.

(Marked Government's Exhibit 127 for identification.)

Mr. MacMahon: At this time, your Honor, the Government offers certified copies of the income tax return for Crescent Music Company for the fiscal year ending August 31, 1949, which has been marked Government's Exhibit 124 for identification.

The Court: What is the year? Fiscal year ending what?

Mr. MacMahon: August 31, 1945, your Honor.

Also the partnership income tax return for Crescent Music Company for the fiscal year ending August 31, 1946, which is Government's Exhibit 125 for identification.

Also the partnership income tax return for Crescent Music Company for the fiscal year ending August 31, 1947, which is Government's Exhibit 126 for identification.

Also the corporation income tax return for the fiscal year ending August 31, 1948, of Crescent Music Company, Inc., which is Government's Exhibit 127 (381) for identification.

Does your Honor care to see these exhibits before I show them to counsel?

The Court: 127 was the last, was it?

Mr. MacMahon: Yes, your Honor.

(A pause.)

Mr. Fennelly: I object to Exhibits 124 through 127 for identification on the ground that they are irrelevant and immaterial and, as to 127 for identification, on one of the schedules, there is some computation that I think should be stricken.

The Court: What is the theory on which those returns are offered?

Mr. MacMahon: The income of the Crescent Music Company and the Crescent Music Company, Inc. in which Mrs. Costello is stated to have an interest, your Honor.

The Court: Does it show anything different than has already been testified to from the books?

Mr. MacMahon: Shows income, your Honor, which has not been testified to.

The Court: I beg your pardon?

Mr. MacMahon: It shows the income, your Honor.

The Court: Oh, the total annual income payable to her?

Mr. MacMahon: Yes, and her distributive share, (382) yes.

The Court: What about this point Mr. Fennelly makes about these computations? I take it you are not offering that?

Mr. MacMahon: No, I am not, your Honor.

The Court: I take it what you referred to were those pencil figures which appear to have been put in on the original

Mr. MacMahon: That is right.

The Court: (Continuing) —on this schedule—I don't know what it is—schedule, fiscal year ending August 31, 1948, statements with respect to income and expenses.

That is what you meant?

Mr. Fennelly: That is right.

The Court: That is not included in the offer. Otherwise your objection is overruled, and the exhibits may be received.

Mr. MacMahon: May the record note, your Honor, that your Honor was referring to 127 for identification?

The Court: Yes.

(Marked Government's Exhibits 124 to 127 in evidence, respectively.)

Mr. MacMahon: Will you mark these as separate (383) exhibits? Mark it on the back.

(Marked Government's Exhibits 128 through 136 for identification, respectively.)

Mr. MacMahon: Your Honor, may we have just a minute to key these to the books?

(A pause.)

Q. Mr. Murphy, I show you Government's Exhibit 128 for identification and ask you if you can tell me what it is. A. That is a photostat of a capital account of partners, Crescent Music Company, from July, 1943, through September 15, 1944.

Q. What book does that come from? A. General ledger.

Q. Which is in evidence as Government's Exhibit—which has been marked Government's Exhibit 115 for identification, is that correct, Mr. Murphy? A. Yes.

Q. Is 115 for identification the general ledger? A. No. 113.

Q. So that the record will be clear, then, Government's Exhibit 128 for identification is a copy of a page taken from 113 for identification? A. Yes.

Q. Is that right, Mr. Murphy? What is Government's (384) Exhibit 129 for identification? A. Government's Exhibit 129 is a photostat of a ledger sheet. 129 is the photostat of the ledger sheet of Mrs. Loretta Costello Capital Account of September 15, 1944, through September 1, 1947.

Q. And the capital account is shown on which of the books you have identified, Mr. Murphy? A. 115.

Q. So that the record will be clear, 129 for identification, then, is a photostatic copy of a page from Government's Exhibit 115 for identification, is that right? A. Yes.

Q. Mr. Murphy, would you tell us what Exhibit 130 for identification is? A. Copy of a ledger sheet entitled "Mrs. Loretta Costello's drawings from November 2, 1944, through July 6, 1946," and photostat of a copy of a ledger sheet from Government's Exhibit 115.

Q. For identification? A. For identification.

The Clerk: What was the last exhibit number?

The Witness: 115.

The Clerk: That was the previous one, too, wasn't it, 129?

Mr. MacMahon: That is right.

The Clerk: Two 115s.

Q. Mr. Murphy, would you tell us what Government's (385) 130 for identification is. A. 130 is the one—

The Court: Isn't that what he just told us about?

Mr. MacMahon: I am sorry.

Q. Would you tell us what Exhibit 131 for identification is? A. That is a Philip Kastel and Loretta Costello loan—loans, general ledger sheet, September, 1946, through September 30, 1947.

Q. Is that a photostatic copy? A. Photostatic copy.

Q. And where is the original of that, which exhibit? A. Government's Exhibit 115 for identification.

The Court: What is the period covered by 131?

The Witness: September, 1946, through September 30, 1947.

Q. What is Government's Exhibit 132 for identification, Mr. Murphy? A. That is a Mrs. Loretta—ledger sheet—photostat of a ledger sheet, showing Loretta Costello's loan account from January, 1944, through July, 1944.

Q. From what exhibit for identification is that taken? A. From Exhibit 115 for identification.

Q. Mr. Murphy, what is Government's Exhibit 133 (385a) for identification? A. The capital stock of Crescent Music—ledger—photostat of a ledger sheet, showing capital stock of Crescent Music Company, Inc.

Q. What book of account is Exhibit 133 for identification taken from? A. Exhibit 115.

(386) Q. Mr. Murphy, what is Exhibit 134 for identification? A. 134 is a journal sheet marked Journal 1, showing the subscription to the capital account of the stock of Crescent Music Company, Inc.

Q. And this is the photostat, Mr. Murphy? A. Photostatic copy.

Q. And what is it taken from? A. The Exhibit 114 for identification.

Q. Mr. Murphy, what is Exhibit 135 for identification? A. It is photostatic copy of a ledger sheet entitled "Sale of Business."

Q. What is it taken from? A. It is taken from the general ledger of Crescent Music Company, Inc.

Q. Which is exhibit? A. Exhibit 115.

Q. And what is Exhibit 136 for identification? A. It is a ledger sheet showing—photostatic copy of a ledger sheet

showing Mrs. Loretta Costello loan taken from the books of Crescent Music Company, Inc.

Q. From which book? A. Exhibit 115, general ledger.

Q. Now, Mr. Murphy, have you compared Government's Exhibit 128 for identification through 136 for identification with the original books of account? A. I have.

(387) Q. And are these true and accurate photostatic copies from those ledgers? A. Yes.

Mr. MacMahon: I offer them.

Mr. Fennelly: I object to them, your Honor, because the originals are here, and I think the originals should be offered in evidence.

The Court: Is that the only basis of the objection?

Mr. Fennelly: Yes, your Honor.

The Court: Overruled.

(Government's Exhibits 128 through 136 for identification received in evidence.)

The Court: I take it, Mr. MacMahon, you have no objection to exhibiting to your adversary the original books, which are with the witness on the stand and which have been marked for identification?

Mr. MacMahon: No, your Honor, none whatever. If he wants to, I would be happy to offer them, the original books.

Mr. Fennelly: Your Honor, I do also object on the ground that they are irrelevant and immaterial, as these pertain to Mrs. Costello.

The Court: Very well. That objection is overruled as well.

Q. Now, Mr. Murphy, from Exhibits 128 through 136
(388) and the original books of the companies from which these pages are taken and the monthly statements prepared

by you, have you prepared a schedule showing Mrs. Costello's investment in Crescent Amusement Company? A. I have.

(Marked Government's Exhibits 137 and 138 for identification.)

Q. I show you Government's Exhibit 137 for identification and ask you if that is the schedule which you prepared? A. I have prepared this schedule.

Q. I show you Government's Exhibit 138 for identification and ask you if that is the schedule you prepared? A. I have prepared it.

Mr. MacMahon: At this time we offer Government's Exhibit 137 for identification and Government's Exhibit 138 for identification.

Mr. Fennelly: Objection to them as irrelevant and immaterial.

May I ask for a copy of those, your Honor, so that we could work on them?

The Court: Yes.

Mr. MacMahon: Let the record show that Mr. Pierpoint is handing a copy to counsel.

The Court: Objection is overruled, and the exhibits may be received.

(389) (Government's Exhibits 137 and 138 for identification received in evidence.)

Q. Mr. Murphy, referring to Exhibit 137 in evidence, the top item where you state that the balance at credit 9/30/43 per the books is one-third of the partners capital account, what do the books show the capital account to be as of that date 9/30/43? A. $27,000.

Mr. Fennelly: Excuse me. Is this exhibit in evidence that the witness is looking at, your Honor?

The Court: No, I think you know it isn't, Mr. Fennelly.

Mr. MacMahon: The witness is referring to Exhibit 113 for identification.

The Court: When you were asked the question what the account showed were you able to tell us without refreshing your recollection from the document?

The Witness: I would have to refresh it, your Honor.

The Court: Very well. And the document you are refreshing your recollection with is what?

The Witness: 113.

The Court: Very well. You may look at it, and having refreshed your recollection, you may answer the question.

(390) Mr. MacMahon: A photostat of that document is in evidence, your Honor, is Exhibit 128.

The Court: Very well.

Q. Would you answer the question?

The Court: Hand the witness the exhibit, then, if he wants to refresh his recollection and let him read from the exhibit.

Q. Mr. Murphy, I hand you Exhibit 128 in evidence. What is the capital account shown to be? A. $27,000.

Q. Is the form in which that capital was supplied to the company shown on the book? A. On the ledger sheet, reference is R-1 and Journal-1. R 1, 3, 4, 5, and Journal 1.

Q. Do you know—

Mr. Fennelly: Excuse me. May we have, again, the ledger sheet the witness is referring to by number?

The Witness: 128.

The Court: In evidence.

The Witness: In evidence.

Q. Do you know who furnished that $27,000 capital, to your own knowledge? A. I understood it came one-third from each of them.

Q. Do you know? A. No.

Q. To your own knowledge? A. No, sir.

Mr. MacMahon: Your Honor, may I show the jury (391) Exhibits 137 and 138?

The Court: You may.

(Mr. MacMahon hands exhibits to the jury.)

The Court: Mr. Witness, may I see those photostatic exhibits that you have, 128 through 132 or '3?

(Witness hands to Court.)

The Court: Thank you.

(A pause.)

The Court: Mr. MacMahon, do you have available another copy of 137 and 138?

Mr. MacMahon: Yes, your Honor, I do (handing).

The Court: Thank you.

(A pause.)

Q. Mr. Murphy, did there come a time when Crescent Music Company sold out? A. Yes.

Q. Will you tell me when that was? You may refer, if you wish, to Government's Exhibit 135 in evidence. A. That was in August 1948.

Q. What was the sales price?

Mr. Fennelly: Excuse me. I didn't hear the answer.

The Witness: August 1948.

Q. What was the sales price received? A. The sales price was $30,000 cash and the (392) assumption of the liabilities.

Q. Would you refer to Government's Exhibit 131 and Government's Exhibit 132 and the loan account of Mr. Queen in the general ledger, and also— A. Just a minute, counselor—

Q. McQueen loan account— A. (Continuing) You told me to refer to Exhibit 131 and you told me to refer to Exhibit 132.

Q. And would you refer to the loan account of Mr. McQueen in the general ledger?

Mr. Fennelly: Is that in evidence, your Honor?

Mr. MacMahon: I am about to offer it.

The Court: I don't know.

Mr. MacMahon: When he finds it, your Honor, I intend to offer it.

Q. (Continuing) Loan account of McQueen.

(A pause.)

Mr. MacMahon: At this time, your Honor, the Government offers— mark this.

(Marked Government's Exhibit 139 for identification.)

The Court: This is a page taken from 115, is it—

The Witness: Yes.

The Court: —or from 113?

The Witness: 115.

Mr. MacMahon: 115, your Honor.

The Court: May I see it, please?

(Mr. MacMahon hands paper to the Court.)

Mr. MacMahon: Your Honor, the Government offers Exhibit 139.

(A pause.)

The Court: Ladies and gentlemen, we will take our regular mid-afternoon recess now. It is 3.30. We will take a little recess now while counsel are looking at that.

(Jury retires.)

(Short recess.)

By Mr. MacMahon:

Q. Mr. Murphy, would you refer to your ledger and locate, if you can, the loan account of Phil Kastel? A. (Witness hands to Mr. MacMahon.)

Mr. MacMahon: Would you mark this, please?

(Marked Government's Exhibit 140 for identification.)

The Court: Don't we have pending an offer of 139, the McQueen account?

Mr. MacMahon: I am sorry, your Honor. We do.

Mr. Fennelly: I object to it as irrelevant and immaterial.

(394) The Court: I will hear you on that, Mr. MacMahon.

Mr. MacMahon: Your Honor, I am about to show what happened when the business was sold out.

The Court: I don't hear you.

Mr. MacMahon: I am about to show what happened when the business was sold out. All these loans were paid off. And Mrs. Costello received her loan back out of the proceeds of the sale of the business.

The Court: Very well. Overruled.

(Government's Exhibit 139 for identification received in evidence.)

Q. I show you Government's exhibit 140 for identification and ask you to tell me what it is, Mr. Murphy. A. That is a ledger sheet out of the Crescent Music Company, Inc.'s general ledger.

The Court: What exhibit number is that for identification?

Mr. MacMahon: 140.

The Witness: 140.

The Court: 140 for identification—no. You say it is a page from some ledger.

The Witness: 115.

The Court: What was the ledger number?

The Witness: 115.

(395) Mr. MacMahon: At this time, your Honor, the Government offers Exhibit 140 for identification in evidence.

Mr. Fennelly: I object to it as irrelevant and immaterial.

The Court: You are offering this in connection with the—

Mr. MacMahon: The same purpose, your Honor.

The Court: —offer of proof that you just made?

Mr. MacMahon: Yes, your Honor.

The Court: Very well. Overruled.

(Government's Exhibit 140 for identification received in evidence.)

Q. Now, Mr. Murphy, would you refer to Exhibits 133, 134, 136, 139 and 140— A. What was that again? 133?

Q. 133. A. 134—

Q. 134, 136, 139 and 140. A. All right.

Q. (Continuing) And tell me whether there was sufficient money from the sale of the business to pay off the loans and the capital stock? A. There was not sufficient money to pay off the loans in full or the capital stock.

Q. Did Mrs. Costello receive partial payment of (396) her loan? A. She did.

Mr. MacMahon: Would you mark this, please?

(Marked Government's Exhibit 141 for identification.)

Q. I show you Government's Exhibit 141 for identification, and would you describe it and identify it, without mentioning the name of the payee, please? A. It is a canceled check drawn on Crescent Music Company, Inc. dated—

Q. Would you speak up just a bit, Mr. Murphy? A. It is a canceled check drawn on Crescent Music Company, Inc. dated August 31, 1948 in the amount of $12,258.

Mr. MacMahon: I offer Government's Exhibit 141 in evidence.

Mr. Fennelly: I object to it as irrelevant and immaterial.

The Court: Let me see it.

(Mr. MacMahon hands to the Court.)

The Court: Overruled.

(Government's Exhibit 141 for identification received in evidence.)

Q. Now, Mr. Murphy, Government's Exhibit 141 for identification, a check dated August 31, 1948, payable to Mrs. Loretta Costello in the amount of $12,258, does (397) that represent the money which Mrs. Costello received on the sale of the business? A. It represents the amount of money she received from the proceeds of the thirty thousand on the sale of the business.

Q. Her allocate share? A. I beg your pardon?

Q. Her proportionate share? A. Her share.

The Court: Does that check bear your signature?

A. Yes.

Q. Mr. Murphy, could you tell us what account Government's Exhibit 141 for identification was charged on the books of the company? A. It was charged to Exhibit—account number Exhibit 136, Mrs. Loretta Costello loan.

Q. Loan account? A. Loan it says at the top.

Mr. MacMahon: Your Honor, we will start with another company here.

Your Honor, may the record note that I am handing Mr. Fennelly copies of Government's Exhibits 128 through 126?

The Court: 136?

Mr. MacMahon: 136. Also 122-A through G, your Honor.

The Court: Very well.

Mr. MacMahon: Your Honor, may I have leave to substitute photostats for Exhibits 139 and 140, (398) which are pages from the original books?

The Court: You may, but leave the originals available—

Mr. MacMahon: Yes, your Honor.

The Court: —until after the cross examination.

Q. Mr. Murphy, did there come a time when you were retained to do accounting work for Louisiana Mint Company? A. Yes.

Q. Who retained you to do that work? A. Mr. Kastel.

Q. About when was that? A. Some time towards the last month or so of '42 or the first part of '43.

Q. Will you speak up just a little bit, Mr. Murphy? I am sure it is difficult for the last juror to hear you.

What legal entity—

The Court: What were those dates? When was that, the last part of 1942 or the early part of 1943?

The Witness: Last part of 1942 or the early part of 1943.

Q. What was the Louisiana Mint Company as a legal entity? A. A partnership.

Q. What was its business? A. Mint vending machines.

Q. Would you describe a mint vending machine? A. I don't know how to describe one except that—

(399) Mr. Fennelly: I object to it as immaterial and irrelevant.

Mr. MacMahon: Your Honor—

The Court: What difference does it make what

kind of business they did? Aren't we interested here in whether they made money and where it went?

Mr. MacMahon: We are also interested in what kind of business it was as a possible source of unexplained income, which the Government intends to show.

The Court: Very well, if you say so.

Q. Now, Mr. Murphy—

The Court: And the mint vending machine was a slot machine, wasn't it?

The Witness: Yes.

Q. Who were the partners in Louisiana Mint Company? A. They were Philip Kastel, Frank Costello, A. G. Rickerfore, Peter Hand and Thomas Hill, partnership, and Jack Lansky.

Q. Were you at one time appointed by Frank Costello to collect his share of the profits?

Mr. Fennelly: Just a minute. I object to the form of the question as leading.

The Court: Overruled.

Q. You may answer.

The Witness: Would you repeat the question?

(400) (Question read.)

A. I received a letter of instructions from him to receive his distributive share.

(Marked Government's Exhibit 142 for identification.)

Charles B. Murphy—for Government—Direct

Q. I show you Government's Exhibit 142 for identification and ask you to identify it. A. This is a letter dated April 17, 1943 addressed to myself.

Q. From whom did you receive it? A. From Mr. Frank Costello.

Q. Do you recognize Frank Costello's signature? A. I do.

Q. At the bottom of it? A. It is my belief it is his signature.

Mr. MacMahon: Your Honor, the Government offers at this time Exhibit 142 for identification.

I have a copy of it, if your Honor would care to see it (handing paper to the Court).

The Court: Dated April 17, isn't it?

Mr. MacMahon: April 17, 1943.

The Court: Addressed to the witness?

Mr. MacMahon: That is right, your Honor.

Mr. Fennelly: No objection.

Mr. MacMahon: May the record note, your Honor, (401) I am handing counsel for defendant a copy of that letter?

(Government's Exhibi 142 for identification received in evidence.)

Mr. MacMahon: May I have leave, your Honor, at the close of counsel's examination, to substitute a copy of the letter?

The Court: I don't hear you.

Mr. MacMahon: May I have leave to substitute a copy for the original?

The Court: Oh, yes.

Mr. MacMahon: At the conclusion of the examination.

Q. Mr. Murphy, did you collect money for Frank Costello from the Louisiana Mint Company from time to time? A. I received money from Mr. Kastel.

The Court: Even I didn't hear you that time.

The Witness: I said I received money from Mr. Kastel.

The Court: Would you repeat the question?

Q. Did you receive money for Frank—

The Court: No. Let the reporter read the question.

(Question read.)

The Witness: I received money from Mr. Kastel (402) from time to time.

The Court: Now, Mr. Witness, the answer to that is yes or no—

Mr. Fennelly: I move to strike it out.

The Court: —or you don't know. The answer, that you have repeated now, is not responsive. You are not asked whether you had ever collected money from Kastel. You were asked whether you ever collected money for Frank Costello.

The Witness: I did collect money for Frank Costello.

Mr. Fennelly: Will your Honor strike out the answer?

The Wifness: Yes, sir, I did.

The Court: Very well. Do you now move to strike out—

Mr. Fennelly: The prior answers?

The Court: The prior answers?

Mr. Fennelly: Yes.

The Court: I will grant that. That statement that he got money from Kastel, yes, that is stricken.

Q. You did collect money for Frank Costello? A. I did.

Q. And did that money come from Louisiana Mint Company? A. It came from Louisiana Mint Company, yes.

(403) Q. Who brought the money to you? A. I either received the money from Mr. Kastel or someone brought it over various times.

Q. In what form did you receive the money? A. Cash.

Q. Do you recall the denominations of the bills, most of them? A. Most of them were hundred dollar bills.

Q. How long did you continue to do accounting services for Louisiana Mint Company? A. I would like to just check the books on that again.

Mr. MacMahon: Would you mark these, please?

(Marked Government's Exhibits 143 for identification and 144 for identification.).

Q. Mr. Murphy, before answering my question, would you identify Government's Exhibit 143 for identification and also Government's Exhibit 144? First, 143. A. Government's Exhibit 143 is the cash receipts, disbursements and journal of the Louisiana Mint Company.

Exhibit 144 is the general ledger of Louisiana Mint Company.

Q. Would you refer to those exhibits to refresh your recollection as to how long you continued to do accounting services for Louisiana Mint Company? (404) A. The actual operations of the Mint Company stopped in about May 1946. I continued doing work after that and I think it ran — they were running a building and paying a watchman — and I think it was until some time in '49. That I couldn't tell you definitely.

The Court: So that your services ran from the latter part of '42 or the early part of '43 up until when in '49?

The Witness: I couldn't tell you, your Honor, but it was some time in '49 when they gave up the building.

The Court: Some time in '49?

The Witness: I think it was '49, if my recollection is correct.

(405) Mr. MacMahon: Would you mark this? It goes in this folder, so you might mark that.

(Marked Government's Exhibit 145 for identification.)

Q. Mr. Murphy, I show you Government's Exhibit 145 for identification. Will you state what it is? A. That is a file containing my work papers.

Q. Your work papers with respect to what company? A. The Louisiana Mint Company. Daily—monthly reports and social-copies of social security returns; normal work papers that belong in the file.

(Marked Government's Exhibit 146 for identification.)

Q. Mr. Murphy, I show you Government's Exhibit 146 for identification and ask you what that is. A. This is another of my work paper files of the Louisiana Mint Company.

Q. Containing the same general material that was in the other exhibit 145? A. The same general material, yes.

(Marked Government's Exhibit 147 for identification.)

Q. Mr. Murphy, I show you Government's Exhibit 147 for identification. Would you tell us what that is? A. That is another file of my work papers, (406) Louisiana Mint Company.

Q. Containing similar papers to those you described in 145? A. Similar papers, yes.

(Marked Government's Exhibit 148 for identification.)

Q. Mr. Murphy, I show you Government's Exhibit 148 for identification. Would you tell us what that is, please? A. This is another of my office files, work paper files, containing the same matter, Louisiana Mint Company.

Mr. MacMahon: Would you mark this, please?

(Marked Government's Exhibit 149 for identification.)

Mr. MacMahon: Would you mark the contents 149-A?

The Clerk: The envelope is 149 for identification.

(Marked Government's Exhibit 149-A for identification.)

Q. Now, Mr. Murphy, I show you Government's Exhibit 149 for identification, and I ask you to tell me what it is. A. It is an envelope from the Louisiana Mint Company addressed to Mr. Charles B. Murphy.

Q. I show you Government's Exhibit 149-A for identification and I ask you to tell me what that is. (407) A. That is a sample weekly report received from the Mint.

Q. Received from Louisiana Mint Company? A. Louisiana Mint Company.

Q. With supporting data, is that right? A. That is right.

Mr. MacMahon: Your Honor, at this time the Government offers Government's Exhibit—just a moment.

Q. Now, Mr. Murphy, were the papers marked Government's Exhibit 149-A which were contained in the envelope marked 149-A the papers from which your prepared the regular books of account of Louisiana Mint Company? A. They are.

Mr. MacMahon: Your Honor, at this time I offer Government Exhibits 149 and 149-A.

The Court: Are they similar to records which were offered in, I think it is, Exhibit 123?

Mr. MacMahon: Your Honor, at this time I offer Exhibit—

The Court: With respect to the Crescent Amusement—Music?

Mr. MacMahon: Your Honor, at this time I offer 123, the purpose being to show the dissimilarity of the records kept in 123 from those kept in 149 and (408) 149-A.

The Court: Well, is that dissimilarity either material or relevant on any issue that this jury is going to have to determine?

Mr. MacMahon: The dissimilarity is very relevant, your Honor, to the issue of possible source.

The Court: What? I didn't

Mr. MacMahon: To the issue of a possible source for the unexplained expenditures that will be shown in this case.

The Court: I see. I have your point. All right.

Mr. Fennelly: I object to Exhibits 149 and 149-A

on the ground that they are irrelevant and immaterial, and also that the offering of them is in violation of the fourth and fifth amendments of the Constitution, in that this is a partnership and partnership records are personal records of the defendant and may not be used against him on a trial.

The Court: 123 was reoffered: Do you make any—

Mr. Fennelly: Yes, the same objection, your Honor. I shouldn't say the same objection, but a different objection on that because these are—

The Court: You don't raise any Constitutional question on 123?

Mr. Fennelly: No.

(409) The Court: That is merely on relevance and materiality.

Mr. Fennelly: Well, now, wait a minute. Are these—

The Court: 123, as I understand it, was a sample of the weekly report which the witness said he got from the Crescent Music Company and on the basis of which he made the postings in the ledger, the journals and cash books.

Mr. Fennelly: Well, the Crescent Music Company, Mr. Costello was not a partner, so there is no such basis.

The Court: I see.

Mr. Fennelly: But I will object to these because they are work papers and the entries upon which they were based were made in a book of record, and the only thing material is the fact of the ultimate records in the book.

The Court: Well, frankly, it seemed that way to me, and it still does, but Mr. MacMahon presses that he proposes to use them to establish facts which he says will be relevant on the issue, and I will not exclude them—

Mr. Fennelly: Would your Honor withhold them until such time as they show some possible connection with any proof?

(410) The Court: I assumed that he was about to do that right now if 149 and 149-A go in.

Mr. MacMahon: Precisely, your Honor.

The Court: But they are not going to go in right away, since you have raised a Constitutional question that I will have to look at a little bit, but I will reserve decision on that, and it is 25 after 4 now, so I am not going to keep the jury around while I burrow.

Mr. Fennelly: I think I may be able to give your Honor some aid on the subject.

The Court: Well, I shall welcome it very much.

Mr. MacMahon: Your Honor, may we have the same opportunity?

The Court: Oh, my, not only have the opportunity, but I welcome it.

All right.

If you are prepared to discuss it now, perhaps we might do it after the jury goes, or do you prefer to cite me some authorities in the morning, Mr. Fennelly?

Well, in any event, I am going to let the jury go.

Ten-thirty tomorrow morning, ladies and gentlemen, but remember the instructions that I have been giving you right along. It may seem strange to (411) you to have this repeated, but it is very important, particularly in a long case. Don't talk about the case among yourselves and certainly not with anybody else, and keep your minds completely open until all the evidence is in and until the case is submitted to you, if we reach that, under the instructions of the Court.

Ten-thirty tomorrow morning.

(Jury left the court room.)

The Court: Now, Mr. Fennelly, do you propose to test the matter now, or would you prefer to do it tomorrow morning, and let me have a memorandum, or if you have one now—

Mr. Fennelly: I have cases on it, if your Honor would like to have them. I can give them to you now, if your Honor would like them now.

The Court: Yes, I would.

Mr. Fennelly: I am sorry it is not in a more formal state, your Honor. I did not know whether the issue—

The Court: If the citations are there, that is all I need.

Mr. MacMahon: May the record note, your Honor, that Mr. Fennelly did not serve a copy of that on Government counsel.

(412) Mr. Fennelly: The reason I had not, I found that the Government was giving the Court, during the motions in this case before, was giving the Court memoranda, that it did not furnish me with one, so I thought I had better adopt their practice.

Mr. MacMahon: What does Mr. Fennelly have reference to? I know of no memoranda—

The Court: I don't know, but I have enough to try out the issue on this indictment, and I am not going to try out that one.

Mr. MacMahon: Your Honor—

The Court: Just a minute, I am not going to get into that wrangle. You stated what is the fact. But what happened prior to this I am not concerned with.

Now, Mr. MacMahon, regardless of what has gone before, I will now hand you the exact sheet of paper

which Mr. Fennelly handed to me, and I have copied down the citations contained on that.

Mr. MacMahon: Thank you, your Honor.

The Court: And that will enable you to prepare whatever memoranda you desire, and you may have it for me tomorrow morning.

Mr. MacMahon: Thank you, your Honor. I simply wanted the record to note that the Government has not handed to your Honor any memoranda whatever in this case.

(413) The Court: Oh, no. That is a fact, that there are no memoranda here; and I did not understand that to be Mr. Fennelly's point. You mean since we opened the trial here?

Mr. Fennelly: No, your Honor. I am speaking about motions that have transpired in the past.

Mr. MacMahon: That also I—

The Court: Yes.

Mr. MacMahon: May the witness be excused, your Honor?

The Court: Oh, yes.

Mr. MacMahon: Thank you, your Honor. And the Government will have an opportunity to study this.

The Court: (To the witness) You will be back tomorrow morning.

The Witness: Do I have any specific instructions?

The Court: Yes. Be back tomorrow morning at 10.30.

Mr. MacMahon: Your Honor, there is just one point. In the record we find there was an error made in the testimony of the witness Amilcare Festa, who testified Thursday. At one point the record notes a $13,000 payment. The fact is, and it is my recollection, that he testified to $18,000, and that point is later brought out item by item in the

record. I wonder if we could have that corrected now.

(414) The Court: Why don't you indicate to Mr. Fennelly the page of the record where that occurs and let him check it up?

Mr. Fennelly: Which witness is it?

Mr. MacMahon: Amilcare Festa.

The Court: It appears that the transcript contains a figure of $13,000 as the total amount of the mausoleum, and Mr. MacMahon says his recollection is that the exhibit shows—the testimony was 18,000-some odd.

Mr. MacMahon: 18,000.

Mr. Delaney: Your Honor, it wasn't the way the testimony was until the end. All he did testify to was 13,000. Later on he cleared it up. So the record as it is shown is correct.

The Court: Well, I am not going to pass on that now. I haven't the transcript in mind. If you point the page out to counsel for the defendant, they can probably stipulate.

Mr. MacMahon: All right.

(Adjourned to Tuesday, April 13, 1954, at 10.30. a.m.)

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(415) New York, April 13, 1954,
10.30 o'clock a.m.

Trial resumed.

(The following proceedings were had in the absence of the jury.)

The Clerk: If there are any witnesses present in the courtroom at this time they will please retire to the witness room.

The Court: Mr. MacMahon, at the recess last night we had under consideration an objection to the admissibility of some testimony or documents, rather, which the Government offered, and Mr. Fennelly presented me with a short memorandum, citing two or three cases, which I turned over to you, and you were to have a memorandum for me this morning. Do you have it?

Mr. MacMahon: I do, your Honor.

The Court: May I have it now? Let the record show that—

Mr. MacMahon: Your Honor, I would first like—

The Court: —that this conference or discussion is occurring out of the hearing of the jury, which has not (416) yet been called in.

Yes?

Mr. MacMahon: I would first like to make the point, your Honor, that this motion should not be entertained because it is not timely under Rule 41(e) of the Federal Rules of Criminal Procedure, nor is it timely under the decision of the United States Circuit Court of Appeals for the Second Circuit in United States v. Salli, which is cited in our memorandum.

The Court: Do you have a copy of the memorandum to give to Mr. Fennelly?

Mr. MacMahon: Yes. May the record note that I am serving a copy on Mr. Fennelly?

The Court: Yes.

(A pause.)

The Court: Have you seen the memorandum, Mr. Fennelly?

Mr. Fennelly: Yes, your Honor.

The Court: Do you desire to make any statement with respect to it or on any other matter connected with your objection?

Mr. Fennelly: Well, your Honor, I think that it should be developed from this witness that, although this witness has so far testified that he received a subpoena duces tecum and produced some records, the fact is that (417) he did not have either possession or control of any of the records except his own personal work sheets, and he was not the one who responded to the subpoena. They did not come from him, except his own work sheets.

The Court: Suppose that be so, isn't the inquiry here did they come from this defendant and is this defendant required to produce them?

Mr. Fennelly: They came from the possession—partnership records of the partnership.

The Court: Well, that does not answer the question which I posed to you, but you don't have to answer it if you don't wish to.

Mr. Fennelly: I am not sure I understood it then.

The Court: Well, the question was, what I said to you is this, does it make any difference whether these records were taken from the possession of Murphy? Isn't the inquiry here on your objection whether they were taken from the defendant?

Mr. Fennelly: If they are taken from the partner, if these records for example were in the possession of a State authority you would have a completely different problem.

The Court: If they what?

Colloquy

Mr. Fennelly: If they were taken from the (418) possession of a third party you would have a different problem. If they are taken from—production is compelled by a partner, it is exactly the same as if you compelled him to produce them himself. Those are the cases I have given you as decided by one by Judge Goddard.

The Court: Oh, the Goddard case is an entirely different case, Mr. Fennelly, as I read it. There the man, who was one of the partners, was summoned before the grand jury and had to produce his books right there, and did.

Mr. MacMahon: Your Honor—

The Court: But it is a different situation I think.

Mr. Fennelly: But the—

The Court: And he was compelled to turn them over, over his protest.

Mr. Fennelly: Yes, but the objection of the other partners in the same case is equally applicable, that if the—

The Court: That may be so, but that is not what that case holds, which I understood is what you said.

Mr. MacMahon: It is also the point that this partnership is a Louisiana partnership, and under Section (419) 2808 of the Civil Code of Louisiana—unfortunately I only have two copies of it, your Honor—the partnership property does not belong to any of the individual partners; it only belongs to the individual partner after liquidation, and this partnership has not been liquidated.

Mr. Fennelly: All that says is they had an undivided interest in the whole. I don't think there is any dispute about that.

The Court: I am prepared to rule on the motion. You may bring the jury in—I'll rule on the objection, rather.

Mr. Fennelly: May we examine the witness Murphy preliminary to your Honor's ruling to develop the facts that he didn't have the records in his possession?

The Court: Pardon me. Withhold the jury, Marshal.

Mr. MacMahon: Your Honor, I submit that that question is now immaterial. Murphy's sole function here is to identify these books; and the question of who produced them was solved, your Honor, on the motion heard by you two months ago where Mr. Fennelly was present. At that time Mr. Hillary Gaudin, if your Honor recalls, appeared for Mr. Kastel, Mr. Murphy and Mr. Tanico, who had previously been served with a (420) subpoena. Mr. Fennelly was served with a copy of that order. He raised no objection. He stated on the record he wasn't concerned with the motion, and Gaudin, in behalf of those three people who had been subpoenaed, raised no objection. His only point was, and he stated in response to my summary of the facts that they were willing to produce them; that the only question was when they must produce them, how they must produce them and who would pay for it.

I therefore submit, your Honor, that these records have been produced pursuant to a valid Court order signed by Judge Irving Kaufman and by an order signed on consent by your Honor, and that they were produced by the partner Phil Kastel, who appeared through his counsel at that proceeding.

The Court: Yes, I agree with you, but now I have before me Mr. Fennelly's request. What is it now, you want to examine Mr. Murphy as to what?

Mr. Fennelly: To examine Mr. Murphy preliminarily to your Honor's ruling on the motion.

The Court: Out of the hearing of the jury?

Mr. Fennelly: Can be, yes. Makes no difference to me.

The Court: I will permit you to examine Murphy out of the hearing of the jury on this question, since you (421) think it is important, to support a constitutional objection. Yes, you may do that. Call the witness Murphy.

Mr. MacMahon: Your Honor, I still raise the point that this motion is not timely in the middle of a trial, under all these circumstances:

The Court: It isn't on the motion, Mr. MacMahon. Counsel has objected to the admission of these documents against his client. Up to now my intention was to overrule the objection. Mr. Fennelly expects, and by inference represents, that by examining the witness facts may be developed which will further support his objection, and I will give him that opportunity.

CHARLES B. MURPHY resumed.

Preliminary Cross Examination by Mr. Fennelly:

Q. Mr. Murphy, were any of the records of Louisiana Mint Company, which were referred to yesterday, in your possession in New Orleans prior to their being subpoenaed here other than your own work papers? A. No, sir. I had my work papers only.

Q. And where were the Louisiana Mint Company records, if you know, prior to the subpoena? A. They were stored at the Beverley Country Club.

Q. And they were under Mr. Kastel's—in his (422) possession at the Country Club?

Mr. MacMahon: I object to that question. That calls for a conclusion.

The Court: Yes, sustained.

Do you know whose possession they were in? It would be much more helpful if you wouldn't lead the witness.

The Witness: They were stored on the Beverley Country Club.

Mr. Fennelly: That is all.

By Mr. MacMahon:

Q. Mr. Murphy, and the Beverley Country Club at the time of the subpoena was a corporation, was it not? A. Yes, sir.

Mr. MacMahon: That is all.

The Court: You may call in the jury.

(Jury enters the courtroom.)

The Court: Good morning, ladies and gentlemen. The objection to the admission of these records is overruled. Proceed.

Direct Examination by Mr. MacMahon (Continued):

Q. Mr. Murphy, I show you Government's Exhibit 123 in evidence and I ask you if you would describe for me the top sheet, the first one under that exhibit number? A. The first one is the daily report from Crescent (423) Music Company. That shows date, number of boxes checked and the total. Shows collections from the music boxes, payments on loans, the cash, the expenses per the receipts, and then recaps the expenses in classifications.

Q. Will you speak up just a little bit? A. It recaps the expenses in classifications.

Q. Shows a total of how much money was collected? A. Yes, shows total receipts from the boxes, total payments on the loans, the net cash, the expenses per the receipts, and recaps the expenses as to classifications.

Q. Underlying that, Mr. Murphy, what is this first document, which appears to be an adding machine tape? A. These are tapes from the collections.

Q. Adding machine? A. Adding machine tape from the collection.

Q. Totaling up the collection? A. That is right, collections and the loans.

Q. And loan account. And then there are other adding machine tapes. A. Similar.

Q. And what are they? A. Same thing, building up the collections from boxes and the loans.

Q. And these are all dated, Mr. Murphy? A. All dated. The third adding machine tape is not dated.

(424) Q. But it again is the same? A. Is the same.

Q. Underlying that adding machine tape, Mr. Murphy, are a series of numbered slips, all dated March 3 or March 28, 1947. What does the address refer to? A. That is apparently the locations of the boxes.

Q. What was the amount referred to, the first one, that was collected from a box? A. Total amount that was in the box.

Q. What was that amount? A. $2.

Q. What is this service charge shown on here? A. That is a payment on the loan, apparently. If you check the slips there is a payment there on account on the loan.

Q. A loan made by the company— A. By the company.

Q. —to the— A. To the location.

Q. —to the location? Then it says net commissions. What is that? A. That is a commission that goes to the place in which the music box is.

Q. Net collection, what is that? A. That is the company's share.

Q. There is a remark here that there is no meter on the box. A. No meter.

Q. Is that right? A. That is right.

Q. That is signed by the collector, is that right? (425) A. It is apparently his signature.

Q. And there are some 28 of those slips, underlying collection slips, is that right, Mr. Murphy? A. Yes, sir.

Q. And those support the total shown on the recap sheets, is that right? A. Yes, sir.

Q. Then there are a series of bills attached to it? A. Yes, sir.

Q. Supporting the items of expense? A. Paid out in cash.

Q. Is that right? A. Yes.

Q. And these are bills from the supplier of the merchandise? A. That is right.

Q. Then I notice some slips here for 52 cents—what is that—dollar fifty two cents. A. That is apparent—52 cents—apparently an expense that they paid out.

Q. And another one here for $2.94. A. Same thing.

Q. And another here for 54 cents. A. Yes, sir.

Mr. MacMahon: Your Honor, may I pass these to the jury?

The Court: What are these?

Mr. MacMahon: Those are underlying data for Crescent Music collections.

Your Honor, I will withhold—

(426) The Court: Just a minute.

(Conference between the Court and Clerk.)

The Court: That was received yesterday afternoon.

The Clerk: My records show it wasn't.

The Court: Correct your records. It was an exhibit yesterday afternoon.

The Clerk: All right; I'll do it.

Mr. MacMahon: Your Honor, I will withhold passing that until I have gone over 149 with the witness.

Q. Mr. Murphy, I show you Exhibit 149-A, which are the contents of the envelope marked Government's Exhibit 149-B in evidence. Would you state to me what the exhibit—what the top sheet, dated May 6, 1944, on the letterhead of the Louisiana Mint Company, is? A. That is a recap of the weekly reports showing expenditures or expenses paid out during the week; also showing cash balance—cash in, less expenses, and the balance.

Q. That corresponds, does it not, Mr. Murphy, to the top sheet of Government's Exhibit 123 for identification? A. I don't follow—quite follow that.

Q. Is that the recapitulation? A. This is the weekly recapitulation.

Q. And this is the daily recapitulation? (427) A. Daily, yes.

Q. Now, Mr. Murphy, are there any collection slips underlying that recapitulation sheet? A. No, sir.

Q. Did you ever see any collection slips? A. No, sir.

Q. There are bills underlying this to support expenses, are there not? A. That is right, sir.

Q. We have got a petty cash item of $6.08, is that right? A. Yes.

Q. Another one of 28 cents. A. Yes.

Q. Is that right? Another one of 75 cents. A. Yes.

Q. Is that right? Another one of $3.20? A. Yes.

Q. You got another one of 20 cents. A. Yes.

Q. Is that right? Another one of a dollar. A. Yes.

Q. Another one for $81.56, is that right? A. Yes, sir.

Q. Another one for $6.25? A. Yes, sir.

Q. Another one for $16.40? A. Yes, sir.

Q. Another one for $8.80? A. Yes, sir.

Q. And those 56-cent and 28-cent items were for newspapers, is that right, Mr. Murphy? (428) A. the slip shows 56 cents for a newspaper and 28 cents for a newspaper.

Mr. MacMahon: May I pass these Exhibits 149 and 128 to the jury at this time, your Honor?

(Mr. MacMahon hands to the jury.)

The Court: How did you describe those? What were the numbers you described them by?

Mr. MacMahon: One of them is 123, your Honor.

The Court. Oh, 123. I thought you said 128.

Mr. MacMahon: 123 and 149.

The Court: 123. All right.

Mr. MacMahon: 149-A. I am sorry, your Honor.

(Jurors examine the exhibits.)

(Exhibits returned to Mr. MacMahon.)

The Court: Very well. We will take our recess now, ladies and gentlemen.

(Short recess.)

By Mr. MacMahon:

Q. Mr. Murphy, did Louisiana Mint Company ever have a bank account? A. Not to my knowledge.

Q. Mr. Murphy, I notice on Government's Exhibit 149-A an item on the letterhead of Louisiana Mint Company dated May 6, 1944 showing an April 30th balance of $198,694.33. A. Yes, sir.

Q. Now, would you refer to your general ledger, (429)

Government's Exhibit 144 for identification, and tell me what the cash balance on the books was at that date?

The Court: What date?

Mr. MacMahon: April 30, 1944, your Honor.

A. The general ledger cash account reflects a balance of $33,694.33.

Q. What is the explanation for the difference in those two figures? A. The 198,090 does not include the drawings by the partners.

Q. Drawings for what period, Mr. Murphy? A. It would be the period December 19—

Mr. Fennelly: Excuse me. Is this from recollection, your Honor, or is this again testimony from a book that the Government does not offer in evidence?

Mr. MacMahon: The witness is refreshing his recollection, your Honor.

The Court: Are you able to answer the question that was just asked you from recollection?

A. I would have to refer to the books, your Honor, to be sure that they are right.

The Court: You may do so.

Mr. Fennelly: Your Honor, it wouldn't appear that the witness had any independent recollection to be refreshed.

Mr. MacMahon: May I examine the witness (430) preliminarily on this, your Honor?

The Court: Let him answer the question which I have ruled he may, unless you want to do something else.

Q. Would you proceed to answer? A. It shows a distribution December 1943 through April 1944 of $165,000.

Q. That is withdrawn by the partners during that period? A. That is right.

Q. Now, Mr. Murphy, do you know where the cash was kept? A. I do not.

Q. Did you ever count the cash? A. I did not.

Q. Now, you previously testified that you received money from Phil Kastel mostly in hundred dollar bills to transmit to Frank Costello. How did you send that money to Costello? A. That money either went by cashier's check or bank draft; one or two occasions I sent my check.

Q. Did you ever close the books of the Louisiana Mint Company? A. They have never been closed.

Q. Will you refer to your journal and tell me the date that the last receipts were entered in the books, Government's Exhibit 143 for identification?

Mr. Fennelly: I object to the question. He is asking him to testify about records which are not in evidence.

(431) The Court: I think that is so.

Are you able to tell us, what was the amount?

Q. Would you give us the date of the last receipts, Mr. Murphy, from your independent recollection? A. Your Honor, I have checked these books over since I have been up here and I can guess at the dates, but that is the best it would be.

The Court: Would looking at that book, the journal, refresh your recollection?

The Witness: Yes, sir.

The Court: You may look at it.

A. August 6, 1946 is the last entry in the cash receipts.

Q. Now, Mr. Murphy, could you give me the date from your independent recollection of the last disbursement? A.

I can give the approximate date, but I couldn't give the date until I go back into the books.

Q. Could you refresh your recollection from the books? A. I could, sir.

Q. Would you do so?

Mr. MacMahon: May the record note that the witness is referring to Government's Exhibit 143 for identification.

A. The last entry in the cash disbursements November 26, 1947.

(432) Q. Now, Mr. Murphy, can you tell me from your recollection what the cash balance on hand was at that date? A. I could not, sir.

Q. Could you do so by refreshing your recollection from the books? A. I could.

Q. Would you do so? Would you state which exhibit you are referring to, Mr. Murphy, please? A. Yes, sir. That will require calculation.

The Court: Give the witness a piece of paper or a pad.

The Witness: I have paper here.

The Court: Oh, he has a pad.

A. Government's Exhibit 144, which is the general ledger of the Louisiana Mint, shows a balance down in the cash account at December 1, 1946 of $28,737.10. The cash disbursements section of Louisiana Mint books show cash disbursements—

Mr. Fennelly: Excuse me. Is this from recollection, your Honor, or is this merely a recitation?

The Court: No, this clearly is not.

You were asked to give a figure which you said you

were unable to give from recollection but which you could give from looking at the book.

The Witness: I could, sir.

The Court: All right. Now, the witness is (433) apparently being a little more specific than he is required. It is not necessary for you, in order to answer that question, to give what you are now giving.

The Witness: All right, sir.

The Court: You may make whatever calculations you wish and you may state then what is the answer to the question that you were asked.

Mr. Fennelly: May I examine the witness preliminarily?

The Court: For what purpose?

Mr. Fennelly: To find out whether he has any independent recollection of whether or not in fact—

The Court: You may not, Mr. Fennelly. The record is clear. The witness says that several times since he came up here he has examined the books, that he could give approximations in answer to the questions and that he could not give exact answers without refreshing his recollection from the books. Now, that is stated there, and whatever value that has you may argue at the appropriate time. But we are going to get on.

What was the question you were asked?

Mr. MacMahon: Would you read back the question?

(Record read.)

(434) The Court: You are being asked what the cash balance was on a certain date.

The Witness: As of November 26, 1947, accord

ing to the records and books, the cash balance was $22,939.09.

Q. Do you know what became of that remaining cash balance? A. Subsequent to November 1947 where there were disbursements for some expenses. The business was closed but there was rent, minor amounts. What happened to the remainder, I don't know.

Q. What was Frank Costello's share of that remaining cash asset? A. It would be 22-1/2 per cent.

Q Would you compute that?

Mr. Fennelly: Just a minute. I object to the question, and move to strike out what it would be.

The Court: Overruled.

Q. You may answer. A. $5,161.29.

Q. Mr. Murphy, you are familiar with the books and records of the Louisiana Mint Company? A. I am, sir.

Mr. MacMahon: Mark these.

The Court: These books were kept by you or under your supervision, weren't they?

The Witness: That is right, sir.

The Court: You were hired by the Louisiana Mint Company for that purpose.

(435) The Witness: That is right.

(Marked Government's Exhibits 150, 151 and 152 for identification, respectively.)

Q. Mr. Murphy, I hand you Government's Exhibit 150 for identification. Can you state what it is, please? A. 150 is Frank Costello partner capital account ledger sheet of Louisiana Mint.

Q. Is that a photostat? A. Photostatic copy.

Q. Have you recently compared it with the original? A. I have, sir.

Q. Is it true and accurate? A. Yes, sir.

Q. Would you state what Exhibit 151 for identification is? A. Is a photostatic copy of the ledger sheet of Frank Costello's 22-1/2 per cent drawing account, Louisiana Mint Company.

Q. Have you recently compared that with the original? A. I have, sir.

Q. And is that a true and accurate copy of the original? A. Yes, sir.

Q. I show you Government's Exhibit 152 for identification. Would you state what it is? A. 152 is a journal sheet, Louisiana Mint Company, journal 19, photostatic copy.

Q. Have you recently compared it with the original? A. I have, sir.

(436) Q. And is it a true and accurate copy? A. Yes, sir.

Mr. MacMahon: At this time the Government offers Exhibits 150, 151 and 152 for identification in evidence.

The Court: Any objection, Mr. Fennelly?

Mr. Fennelly: No objection.

(Marked Government's Exhibits 150, 151 and 152 in evidence.)

Q. Mr. Murphy, have you prepared a schedule showing the investment of Frank Costello for the fiscal years of the partnership, Louisiana Mint Company, from 12/31 through the years 1943, '44 and '45? A. I have, sir, prepared it since I have been here.

(Marked Government's Exhibit 153 for identification.)

Charles B. Murphy—for Government—Direct

Q. I show you Government's Exhibit 153 for identification and ask you if that is the schedule you prepared? A. It is.

The Court: Will you identify with a little more particularity what books of the Louisiana Mint Company were used as the basis for the computation?

The Witness: This computation was made from the general ledger books.

(437) The Court: Are they marked for identification?

Mr. MacMahon: Yes.

The Court: Here?

Mr. MacMahon: They are.

The Witness: In book No. 144, Louisiana Mint Company, and from the monthly statements contained in my working paper files. I don't know the number.

Q. I'll give you the number. A. That would be Nos. 145, 146, 147 and 148.

The Court: Very well.

Mr. MacMahon: I offer it in evidence.

Mr. Fennelly: I object to it as being incompetent unless the papers upon which it is based are in evidence.

The Court: What do you say to that?

Mr. MacMahon: I am happy to offer them. I don't think Mr. Fennelly is correct in that point. They are voluminous records. Can prepare a schedule from them. They are available for purposes of cross examination. They are here in court.

Mr. Fennelly: The schedule is hearsay without them, your Honor.

Mr. MacMahon: I have no objection to offering them.

The Court: You offer them?

Mr. MacMahon: I offer Exhibits 144 for (438) identification, 143 for identification, 145 for identification, 146 for identification, 147 for identification and 148 for identification.

Mr. Fennelly: Reserving my original objection, that your Honor overruled, as to the constitutionality, I have no other objection.

(Government's Exhibits 145, 146 and 147 for identification received in evidence.)

The Court: I don't recall that you made any objection on the ground of constitutionality as to any of these exhibits, Mr. Fennelly. I will treat it as though you did.

Mr. Fennelly: Not as to Mr. Murphy's work papers, but I understood the ledger had been marked in addition.

The Court: I beg your pardon?

Mr. Fennelly: I thought that a ledger was being offered.

The Court: Yes. Your objection on that constitutional ground, as I recall it, according to the record, related only to 149-A, which was offered last night and consisted of the contents of a sample of weekly reports.

Mr. Fennelly: It would go, your Honor—

The Court: You desire to make that objection?

(430) Mr. Fennelly: Yes.

The Court: With respect to what?

Mr. Fennelly: If I may make the record straight, as to any of the records of Louisiana Mint Company, not as to Mr. Murphy's.

The Court: No, I don't want a general objection, but there have been offered now certain exhibits heretofore marked for identification—

Mr. Fennelly: May I have the—

The Court: —and they consist of exhibits 144, 145, 146, 147 and 148 for identification.

Mr. Fennelly: 144, apparently—is that the ledger?

The Court: That is one of the books.

Mr. Fennelly: That is the only one that I raise any constitutional objection to. Mr. Murphy's work papers I do not.

The Court: Very well. What are those?

Q. Exhibit 144 for identification, what is that, Mr. Murphy? A. General ledger of the Louisiana Mint Company.

The Court: 145?

Q. And Exhibit 143 for identification?

The Court: 143.

A. Is cash receipts, disbursements, and journal (440) ledger or book of Louisiana Mint Company.

Mr. Fennelly: Same objection as to that, your Honor.

The Court: Are these among the books produced according to subpoena which was the subject of the motion under Rule 17(c)—

Mr. MacMahon: Yes, your Honor.

The Court: —passed on by me.

Very well. Your objection is overruled.

Mr. MacMahon: I understood, your Honor, that there is no objection to 145, 146, 147 and 148, which

have been identified as the work papers of the witness, Mr. Murphy.

The Court: So I understand Mr. Fennelly to have stated.

(Government's Exhibits 145 and 143 for identification received in evidence.)

Mr. Fennelly: I wonder if the Government would be so kind as to let me have a copy of this so I can work on it?

The Court: I am sure they will.

Mr. MacMahon: May the record note that I hand Mr. Fennelly a copy of Government's Exhibit 153 for identification?

Also, your Honor, I hand Mr.—

(441) The Court: Excuse me, Mr. MacMahon. Just a moment. I want to straighten out my notes.

(Discussion between the Clerk and Court out of hearing of the jury.)

The Court: Yes?

Mr. MacMahon: May the record note that we hand Mr. Fennelly copies of Government's Exhibits 150 through 152 in evidence?

The Court: Those are those photostats of the various accounts taken from the books of the Louisiana Mint Company?

Mr. MacMahon: Yes, your Honor.

153 I am offering in evidence.

Mr. Fennelly: I have made my objection. It has been cured.

The Court: Now, then, you have no objection to 153?

Mr. Fennelly: I think the Government has cured the—

The Court: That is not what I asked you. I ask you now, in the light of the present state of the record—

Mr. Fennelly: Yes.

The Court: —do you have any objection?

Mr. Fennelly: No objection to it.

(442) The Court: Very well.

(Government's Exhibit 153 for identification received in evidence.)

Q. Mr. Murphy, were there any further entries on the books of the Louisiana Mint Company with respect to the capital account of Frank Costello after December 1, 1946? A. May I look at the ledger?

Q. Do you have any independent recollection? A. To the best of my knowledge there was no entry after December 1, 1946. To be certain, I would like to look at the ledger sheet, if I may.

The Court: You certainly may now because it is in evidence.

Q. Go ahead.

The Court: You may look at it and read from it.

A. (Continuing) The last entry in the capital account of Frank Costello, partner, was a balance brought down on December 1, 1946.

Q. What was the balance? A. $16,721.65 at credit.

Q. Do the general ledgers of the Louisiana Mint Company show any drawings by Frank Costello or any other partner after April 1946? A. That date was April?

Q. That is right? A. No, sir.

(Marked Government's Exhibits 154 and 155 for (443) identification.)

Mr. MacMahon: At this time the Government offers Government's Exhibit 154 for identification, which is a tax return, income tax return of Louisiana Mint Company for the taxable year ending November 30, 1947, and Exhibit 155 for identification, which is a certificate that no record or entry is found to exist for Louisiana Mint Company partnership return for the taxable year ending November 30, 1947.

The Court: No finding?

Mr. MacMahon: That is right.

Mr. Fennelly: No objection.

(Government's Exhibit 154 for identification received in evidence.)

Mr. MacMahon: Your Honor, may I read from one of the schedules annexed to Exhibit 154?

The Court: You may.

Mr. MacMahon: Louisiana Mint Company, 2601 Chartres Street, New Orleans, Louisiana. Tentative return, not operating during period. Only expenses, such as watchmen, rent and so forth. Final return will be filed upon completion of data for fiscal year. Return will reflect loss for period. That is a schedule annexed to the November 30, 1947 income tax return of Louisiana Mint Company.

(444) *By Mr. MacMahon:*

Q. Now, Mr. Murphy, was a final partnership income tax return ever filed by Louisiana Mint Company? A. Not as of this date. Not as at this date.

Q. It has never been filed to this date.

Mr. MacMahon: Your Honor: at this time may I circulate the schedule to the jury?

The Clerk: Government's Exhibits 154 and 155 for identification. received.

Mr. MacMahon: May I ciculate Exhibit 153, which is the schedule?

The Court: Yes.

Mr. MacMahon: I have copies of that, your Honor. Could I submit that to the second row in in the jury perhaps to save some time?

The Court: Let Mr. Fennelly see it to make sure that he has no question of its accuracy.

Mr. Fennelly: I would think it is very dangerous practice to have anything except an exhibit before the jury.

The Court: Well, it has been done in other trials that were as carefully prepared. However, since the objection is made I will not force it. But I suggest hereafter that probably a photostatic copy could be made.

(445) Mr. MacMahon: All right.

The Court: I see no reason in the world why it can't be done. I had a jury where I gave each juror a copy of every exhibit that I put in.

(Jurors look at exhibits.)

The Court: Well, the jury has concluded looking at the exhibit.

Remember my instructions now, ladies and gentlemen.

We will adjourn now until 2.15.

(Recess to 2.15 p.m.)

Charles B. Murphy—for Government—Direct

(446) AFTERNOON SESSION.

(Jury present.)

CHARLES B. MURPHY, resumed.

Mr. MacMahon: May the Government proceed, your Honor?

The Court: Yes.

Direct Examination by Mr. MacMahon (Continued):

Q. Mr. Murphy, did there come time when you commenced doing the accounting work for the Beverley Country Club? A. Yes.

Q. About when was that? A. July, August, '45.

Q. What was the Beverley Country Club? A. Restaurant, casino.

Q. What sort of a legal entity was it? A. Partnership in the beginning, corporation later.

Q. Who were the partners in the Beverley Country Club? A. There were Philip Kastel, Frank Costello, Meyer Lansky, Fred Rickerfere, Carlos Marcello and Dudley Geiger-man.

Q. Any others? A. (No answer.)

Mr. MacMahon: Would you repeat the list?

(Record read.)

Mr. Fennelly: May we have the time fixed, if your Honor please?

The Court: Yes.

(447) Q. When was that when these people became partners? A. Beverley Country Club partnership.

Charles B. Murphy—for Government—Direct.

The Court: At what period?
The Witness: It was 1945—'46.

Q. What was Frank Costello's partnership percentage? A. Twenty per cent.

Q. What was the business of the Beverley Country Club? A. Restaurant and casino.

Q. Were those divided into departments? A. Yes.

Q. Did the Beverley Country Club maintain a bank account? A. Yes.

Q. How many accounts did it have, to your knowledge? A. Well, they had a special account and the regular account.

Q. Were you authorized to sign checks on either of those accounts? A. I was authorized to sign checks on the regular account.

Q. Were you authorized to sign checks on the special account? A. Not to my knowledge, no, sir.

Q. Which department had the special bank account? A. The casino.

Q. Did there come a time when the Beverley Country Club was incorporated? A. Yes, sir.

Q. When was that, to the best of your recollection? A. The charter was sometime toward the end of (448) November, 1946. It began operations on December 1st as a corporation.

Q. Apart from the initial nominal stockholders, who were the original stockholders of the Beverley Country Club, Inc.? A. Philip Kastel, Frank Costello, Myer Lansky, Fred Rickerfore, Carlos Marcello and Dudley Geigerman.

Q. What were their respective interests? A. Kastel, 25; Costello, 20; Lansky, 20; Rickerfore, 13½; Marcello, 15, and Geigerman 2½ per cent.

Q. Did you hold any position with the Beverley Country Club?

Mr. Fennelly: I take it these are percentages of shares of stock, your Honor, that they owned.

The Court: That is what I assumed it to be. That was correct, wasn't it?

The Witness: Yes, sir.

Q. In other words, their interests remained the same, their proportionate interest in the corporation, as in the partnership? A. It did.

Q. Did you hold any position with the Beverley Country Club, Inc.? A. I was appointed the assistant secretary-treasurer.

Q. Did you have authority—did Beverley Country Club, Inc. maintain bank accounts? A. Yes.

(449) Q. How many bank accounts? A. Special and regular.

Q. Which was the regular account, which department was— A. Restaurant.

Q. —the regular account? A. Restaurant.

Q. Restaurant. And the special account was— A. Casino.

Q. Did you have authority to sign checks for either of those bank accounts? A. I had authority to sign checks on the regular bank account.

Q. Did you have authority to sign them on the casino? A. Not to my knowledge; I never did.

Q. Who was the president of the Beverley Country Club, Inc.? A. Philip Kastel.

Q. Who was its operation head and active manager? A. Philip Kastel.

(Government's Exhibit 156 marked for identification.)

Q. Mr. Murphy, I show you Government's Exhibit 156 for identification and ask you if you can tell me what it is. A. That is the social security record for the year 1949.

Q. Of which company? A. Beverley Country Club, Inc.

Q. Mr. Murphy, do you know whether Mr. Costello received a salary after January of 1949 from Beverley (450) Country Club, Inc.

Q. Are you able to state the amount without looking at the book? A. From memory I think I can; I would like to refresh my—be positive from the books, if possible.

The Court: You may do so.

A. Social security records reflect a thousand dollars per month.

The Court: Will you give us the period for that? When did it begin?

The Witness: The first check was paid on May, 1949, I am positive, from January 1st through May, your Honor.

(Marked Government's Exhibit 157 for identification.)

Q. Now, without mentioning the payee, would you identify for me Government's Exhibit 157 for identification? A. These are checks of Beverley Country Club drawn on the regular account, signed by me.

Q. What periods do they cover? A. That is May 30, 1949, October, 1949, November, 1949, November, 1949, December, 1949.

The Court: How many checks are there in there?

The Clerk: Five, sir.

The Witness: Five checks.

(451) The Court: Very well.

Mr. MacMahon: I offer Exhibit 157 in evidence, your Honor.

Mr. Fennelly: No objection.

(Government's Exhibit 157 for identification received in evidence.)

Q. Mr. Murphy, referring to Government's Exhibit 157 in evidence, would you read off the amounts and the payee of those checks and the dates so all can hear, now? A. Check dated May 30, 1949, payable to Mr. Frank Costello in the amount of $4,306.

Check dated October 28, 1949, payable to Mr. Frank Costello in the amount of $3,468.80.

Check dated November 23, 1949, payable to Mr. Frank Costello in the amount of $867.20.

Check dated November 30, 1949, payable to Frank Costello in the amount of $867.20.

Check dated December 21, 1949, payable to Frank Costello in the amount of $867.20.

Q. Now, the checks— A. Only two of those checks were signed by me.

Q. The checks in Government's Exhibit 157, what do they represent? A. Salary checks to Mr. Frank Costello.

(452) (Marked Government's Exhibit 158 for identification.)

Q. Mr. Murphy, I show you Government's Exhibit 158 for identification and ask you to tell me what it is, without mentioning the name of the payee or the amount. A. Pardon?

Q. Without mentioning the name of the payee or the amount, tell me what that is. A. The duplicate part of this voucher check is missing, but from recollection it is a payment of the loan and interest, notes payable and interest.

Q. It is a check? A. A check.

Q. Dated what, Mr. Murphy? A. June 25, 1948.

Q. Of what company? A. Beverley Country Club, regular account, Inc.

Q. Beverley Country Club, Inc. regular account. And is that signed by you, Mr. Murphy? A. It is signed by me.

Mr. MacMahon: I offer Government's Exhibit 158.

Mr. Fennelly: No objection.

(Government's Exhibit 158 for identification received in evidence.)

Q. Now, Mr. Murphy, would you refer to Government's Exhibit 158, state the amount of the check, to whom it is payable, and what it represents? (453) A. The check is dated June 25, 1948, in the amount of $19,960.03 payable to Frank Costello, representing, from recollection, interest and—rather, payment on a note payable and interest on same.

The Court: Let me see it, please.

(Witness hands to the Court.)

Q. Mr. Murphy, referring to Government's Exhibit 157 in evidence which you previously identified as salary checks, do those checks represent all the salary Frank Costello received from Beverley Country Club, Inc. prior to December 31, 1949? A. It is the salary received by Frank Costello from January '49 through December 31, 1949.

Q. Is that all the salary he received prior to that time? A. I would have to check the records to be certain, but I feel positive it is.

Q. Would you check your social security records? A. I haven't the social security for '48 in front of me.

Q. Mr. Murphy, would you refer to Government's Exhibit 156 for identification and tell me how much the chef of the Beverley Country Club received as a salary?

Mr. Fennelly: I object to it as immaterial, your Honor.

(454) The Court: Sustained.

Q. Mr. Murphy, was there ever any distribution of profits by the partnership Beverley Country Club? A. No, sir.

Q. Were any dividends ever declared by Beverley Country Club, Inc.? A. No, sir.

Q. Now, did your office prepare monthly statements of the operations of the Beverley Country Club? A. We did.

Q. Both the partnership and the corporation? A. We did.

Q. And when did you start doing that? A. I believe the first statement was in April, 1946.

Q. Mr. Murphy, did you receive a subpoena duces tecum to produce certain books and records of Beverley? A. I did.

Q. And are you familiar with the books and records of the Beverley Country Club? A. Yes, sir.

Q. Both the partnership and the corporation? A. Yes, sir.

(Marked Government's Exhibit 159 for identification.)

Q. I show you Government's Exhibit 159 for identification and ask you to state what it is. A. This is the minute book of Beverley Country (455) Club, Inc.

(Marked Government's Exhibit 160 for identification.)

Charles B. Murphy—for Government—Direct

Q. I show you Government's Exhibit 160 for identification, and ask you to state what it is. A. This is the general ledger transfer sheets for fiscal years ending November 30, 1946, '7 and '8. We have the partnership and the corporation.

(Marked Government's Exhibit 161 for identification.)

Q. I show you Government's Exhibit 161 for identification, Mr. Murphy, and ask you to state what it is. A. These are transfer sheets of the general ledger of the Beverley Country Club, Inc. for '49 and '50, fiscal years.

(Marked Government's Exhibit 162 for identification.)

Q. I show you Government's Exhibit 162 for identification and ask you to state what it is. A. This is a book containing transfer sheets, cash receipts, cash disbursements, journal, and issues from December 1945 to November 1948, which includes both the partnership and the corporation.

The Court: Let me have those dates.

The Witness: December '45 to November '48.

(456) (Marked Government's Exhibit 163 for identification.)

Q. I show you Government's Exhibit 163 for identification and ask you to state what it is. A. This is a book containing the transfer sheets of Beverley Country Club, Inc. cash receipts, cash disbursements, journal and issues from December 1, 1948, through November, 1950.

(Marked Government's Exhibit 164 for identification.)

Q. I show you Government's Exhibit 164 for identification and ask you to state what it is. A. That is the accounts receivable record from the restaurant, Beverley Country Club, and corporation.

The Court: Book of the corporation alone?

The Witness: No, it contains all the receivables that they had. Some sheets might have been in it.

The Court: I know, but is it a book of the partnership as well as the corporation, or just the corporation alone?

(Marked Government's Exhibit 165 for identification.)

(A pause.)

The Witness: There is one sheet, which is the carry-over on the partnership. The rest of them are (457) corporation.

Q. I show you Government's Exhibit 165 for identification and ask you if you can tell me what it is. A. This is voucher register of Beverley Country Club and Beverley Country Club, Inc. from November, 1945, through November, 1950.

The Court: What did you call that, a voucher?

The Witness: Voucher record.

The Court: Those dates again, please?

The Witness: November, '45, through November, '50.

The Court: November, '50?

The Witness: '50.

Mr. MacMahon: Would you mark a carton for me?

The Clerk: Which one?

Mr. MacMahon: This one (indicating).

(Marked Government's Exhibit 166 for identification.)

Mr. MacMahon: Your Honor, may the record note that Government's Exhibit 166 for identification is a carton approximately 1 foot by 1 foot by 2 feet?

Q. Mr. Murphy, would you identify the contents of Government's Exhibit 166 for identification? I show—

The Court: You may step down from the stand.

Mr. MacMahon: Step down.

(458) (Witness leaves the stand.)

Q. Just in a general way. A. That is a box containing the receipts from the restaurant, dining room and the bar.

Q. And are these checks on the bar and dining room? A. That is right, these are bar checks, dining room (indicating).

The Court: These records are records that you produced pursuant to the subpoena?

The Witness: They weren't in my possession, your Honor.

The Court: You didn't produce them?

The Witness: No, sir.

The Court: Very well.

Q. Are you familiar with these records— A. Yes.

Q. —though? Mr. Murphy—just a moment.

Mr. MacMahon: Will the Clerk mark this one, please (indicating carton).

Mr. Fennelly: I wonder if, on 166, we could have some identification by year, your Honor, if there is one?

Q. Is there an identification by year, Mr. Murphy? I think on the front of the box. A. The box says "October-November '46." Unless (459) you went through every one, it would be impossible.

(Marked Government's Exhibit 167 for identification.)

Q. Mr. Murphy, will you look at Government's Exhibit 167, which again is a carton 1 foot by 2 foot by 1 foot, and would you tell me what those are? A. Those are vouchers containing bills.

The Clerk: Vouchers?

The Witness: Files containing bills.

Q. For what period, Mr. Murphy, or are they filed alphabetically? A. These are filed alphabetically.

Q. Cover the entire period of the Country Club and the corporation? A. Well, they would probably cover both the partnership and the corporation.

Q. You are familiar with those? A. Yes.

Mr. MacMahon: Mr. Clerk, would you stamp this one?

(Marked Government's Exhibit 168 for identification.)

Q. Mr. Murphy, would you identify Government's Exhibit 168 for identification, which is a carton of similar size to 166 for identification. A. These are issue or storeroom requisitions.

Q. For what, for which department? (460) A. They are for the restaurant department, kitchen and bar, withdrawals from the inventories, sir.

Mr. MacMahon: Would you mark this other box, Mr. Clerk?

Mr. Fennelly: Any period of time on that, your Honor?

The Court: I didn't hear any.

Q. Is there a period of time covered by that? A. I couldn't tell you, unless going through this. Some of these, 1950; there are some dated '49, some dated, looks like, '48; 1950.

(Marked Government's Exhibit 169 for identification.)

Q. Mr. Murphy, would you identify 169, which again is a carton similar to Government's Exhibit 166 for identification? A. This is a box containing canceled checks, bank statements, duplicate deposit books, bank books of the Beverley Country Club—Beverley Country Club and Beverley Country Club, Inc.

Q. Which account, Mr. Murphy? A. This happens to be the regular account. I noticed one batch in here marked "Special." The rest of them seem to be regular.

(Marked Government's Exhibits 170 and 170-A (461) for identification.)

Q. Mr. Murphy, I show you Government's Exhibits 170 and 170-A for identification. Would you tell me what

they are? A. Exhibit 170 is a record showing what the receipts are from the restaurant and what the bar receipts are, what the—it is a recap or summary of what happened on that day, how many dinners were served a la carte, how many regular dinners, house checks, chef's checks; and it shows a payroll comparison. They are the statistical records of the restaurant.

Q. Is it a series of daily recapitulation sheets for the restaurant and bar operation? A. That is right, along with the recapitulation of payroll comparison of the different periods, statistical reports.

Q. These are on a daily basis? A. Not comparison of the payrolls.

Q. No. The recapitulation sheets. A. Yes, those are on a daily basis.

Q. What is Government's Exhibit 170-A?

The Court: Pardon me, before you leave that 170, what period does it cover?

The Witness: This is—it covers the period from September, 1948, through March 7, 1951.

(462) The Court: Those, then, are records of the corporation and not the partnership?

The Witness: That is right, your Honor.

The Court: Very well.

Q. Would you refer to 170-A and tell us what it is, Mr. Murphy? A. This is a similar record as Exhibit—the same as exhibit marked 170.

Q. What period does it cover? A. That is March 7th—that is 1946 through March '51. So they would be both the partnership and the corporation.

The Court: Didn't you tell us that 170 covered from September 1948 through March 9, 1951.

The Witness: I was reading from these, your Honor. This is—

The Court: Let's look.

The Witness: September—

Mr. Fennelly: Is that 170-A, your Honor?

The Court: I understood the witness to say, in answer to my question with respect to 170, that it covered the period from September, 1948, to March 9, 1951. Was I wrong about that?

The Witness: To March 7, 1951.

The Court: March 7, 1951?

The Witness: That is right.

The Court: Now 170-A, you say, covers from (463) March 7, 1946, through to a date in 1951?

The Witness: Wait. There is a sheet in here, there is a sheet in here for March 7, 1951, and it goes back until September, 1946.

The Court: Yes. Well, then, both exhibits, is it not the fact, cover the same period, at least in part?

The Witness: It probably—they probably do, your Honor.

The Court: And if that is so, are they duplicates?

The Witness: Let's see. Yes, Sir, these look like duplicates.

The Court: All right.

The Witness: Some of them are.

The Court: All right.

Q. Are you certain that all of them are, Mr. Murphy? A. I can't be certain of them unless I check every one out. That particular date I checked was June 5, '49. And that is the original and this is the duplicate.

The Court: I suggest that it might be safe, if you took some of those off that little table, which

is not fixed too rigidly. I don't have quite the faith in it that you do. It was not constructed to hold a lot of weight but was merely for the convenience of the witness.

(464) (Marked Government's Exhibit 171 for identification.)

Q. Mr. Murphy, would you be good enough to step down and identify the contents of Government's Exhibit 171, for identification, which is a carton like Government's Exhibit 166 for identification? A. This is a carton containing casino reports.

Q. Would you read what they are, please? A. Casino summary sheets, canceled checks, bank statements, bank books and check books.

Q. For what period, Mr. Murphy? A. Is there any way of getting some of these in order? It looks like it is for the whole period.

Mr. Fennelly: I was going to suggest, your Honor, there seems to be a label outside indicating the time, on the box.

Q. Would you read the label, Mr. Murphy?

Mr. Fennelly: I don't know whether that is accurate or not, but the witness might check it.

A. It is the daily summary sheets December 4, 1945, through December 31, 1953.

The Clerk: Pardon me, I didn't get that.

The Witness: December 4, 1945, through December 31, 1953.

The Clerk: When did it start, sir?

Charles B. Murphy — for Government — Direct

(465) The Witness: December 4, 1945.

The Clerk: Thank you, sir.

A. (Continuing) Bank deposit December '45 through December, 1953. Canceled checks, December '45 through November '52. Check books December '45 through February 1, 1954.

Q. Would you take, Mr. Murphy, from the contents, from Government's Exhibit 171 for identification, all the casino summary sheets? A. Take them out?

Q. Yes. Would you check them, Mr. Murphy, to see whether they constitute all of the casino summary sheets for the Beverley Country Club partnership and Beverley Country Club, Inc.? A. I would say yes, sir.

Mr. MacMahon: Would you mark them, please, Mr. Clerk?

The Clerk: Each individually?

The Court: No. Give them one number.

Mr. MacMahon: One number.

The Court: And then A, B, C, all along. But unless you use them separately it won't be necessary to give them any designation. I should think that would be agreeable, Mr. Fennelly.

Mr. Fennelly: I think that is all right.

(466) The Clerk: One number. And I understand that these are casino summary sheets.

Mr. MacMahon: That is right.

(Marked Government's Exhibit 172 for identification.)

Mr. Fennelly: I think that we might have a time when they start and when they end.

The Court: Yes.

Q. Could you tell us when they start and when they end, Mr. Murphy? A. December, 1945, through December 31, 1953.

The Clerk: Could I judge those deemed marked, or mark one of them?

The Court: They are being marked 172, are they?

The Clerk: 172 for identification.

Mr. MacMahon: Would your mark these please, Mr. Clerk?

The Clerk: Separately, or as one?

Mr. MacMahon: Separately.

(Marked Government's Exhibits 173 to 183, inclusive, for identification.)

Q. Mr. Murphy, I show you Government's Exhibit 173 for identification and ask you if you will state what it is. A. That is Suspense Capital Account in the partner-
(467) ship, Beverley Country Club.

Q. Is that a photostat? A. A photostat of the ledger sheet.

The Court: The ledger sheet for what?

The Witness: Suspense Capital.

The Court: Suspense Capital?

The Witness: Yes.

Q. Of the Beverley Country Club? A. Of the Beverley Country Club.

Q. Inc.? A. No, partnership.

Q. And that ledger sheet from which that is taken is which exhibit, Mr. Murphy? A. It is the first ledger. Wait. That may be it (indicating). It is from the first ledger.

Charles B. Murphy—for Government—Direct.

Q. Which is Government's Exhibit— A. 160.

Q. I show you Government's Exhibit 174 for identification and ask you to tell me what that is. A. That is casino report dated December 4, 1945, Tuesday, the partnership, a photostat.

Q. That is one of Government's Exhibit 172 for identification taken from this box, from 171 for identification, is that right? A. That is right.

The Court: Pardon me. Just before you go any further, let me have a look at that.

(468) (Witness hands paper to the Court.)

The Court: This is something taken from Exhibit 171?

Mr. MacMahon: From the—

The Court: Or is it one of those sheets?

Mr. MacMahon: It is one of the sheets.

The Court: Taken from 171 and they were marked 172.

Mr. MacMahon: I believe they were marked 192 at that time—172. 172, your Honor. It is a sheet from the file of the summary sheets, marked Government's Exhibit 172, taken from the carton 171.

The Court: Very well. You may go ahead.

Q. I show you Government's Exhibit 175 for identification and would you state what it is? A. That is the photostat of the general ledger sheet of Frank Costello Capital in the Beverley Country Club partnership.

Q. And it is taken from which ledger? A. 160.

The Court: 160, for identification?

Mr. MacMahon: That is right, your Honor.

Q. I show you Government's Exhibit 176 for identification and ask you to state what it is. A. That is a journal

sheet, December 1, 1946—(469) beginning December 1, 1946.

Q. And this is a photostat, again? A. Photostatic copy of the Beverley Country Club, Inc. journal.

Q. Which is Exhibit No.— A. I would have to see which one it is.

Q. Let's see: A. It should be the larger of the two. That should be the one.

The Court: 162, probably.

The Witness: 162. That is it, 162.

Q. For identification? A. For identification. Leave that there; there may be some more.

Q. I show you Government's Exhibit 177 for identification and ask you to state what that is. A. This is a photostat of a letter from Frank Costello to the Beverley Country Club, Inc. dated September 5, 1950.

Q. Have you recently compared that with the original? A. I have, sir.

Q. Is it a true and accurate copy of the original? A. Yes, sir.

Q. And is it among the papers that were produced pursuant to subpoena? A. Yes, sir.

Q. I show you Government's Exhibit 178 for identification and ask you to state what that is. (470) A. This is a letter to Mr. Frank Costello from myself, dated January 31, 1947, photostatic copy.

Q. Have you recently compared it with the original? A. I have, sir.

Q. And is it a true and accurate copy of the original? A. Yes, sir.

Q. And is it among the papers that were produced pursuant to the subpoena? A. Yes, sir.

Q. I show you Government's Exhibit 179 for identification and ask you to tell me what it is. A. This is a photo-

stat of a ledger sheet taken from the books of Beverley Country Club, Inc. entitled "Due Beverley Country Club."

Q. Would you refer to the ledger, Mr. Murphy? A. That would be 160.

Q. For identification? A. For identification.

Q. And it is a photostat of a page of 160 for identification, is that right? A. Yes, sir.

Q. And have you recently compared it with the original? A. I have, sir.

Q. Is it a true and accurate copy? A. Yes, sir.

Q. I show you Government's Exhibit 180 for identification and ask you to tell me what that is. A. That is a photostatic copy of a ledger sheet taken from the books of Beverley Country Club entitled; (471) "Due Beverley Country Club."

Q. What is that a page from? A. The general ledger from Exhibit 160.

Q. Have you recently compared that with the original? A. I have, sir.

Q. And is it a true and accurate copy of the original? A. Yes, sir.

Q. I show you Government's Exhibit 181 for identification and ask you to state what it is. A. That is a photostatic copy of a ledger sheet from the books of Beverley Country Club, sheet entitled "Due Beverley Country Club."

Here it is (indicating).

The Court: The journal?

The Witness: No, the ledger, I believe.

The Court: What is the exhibit number?

The Witness: The exhibit number, 161, your Honor.

Q. Have you recently compared this with the original? A. I have, sir.

Q. And is it a true and accurate copy? A. Yes, sir.

Q. I show you Government's Exhibit 182 for identification and ask you to state what that is. A. That is a photostatic copy of a ledger sheet (472) taken from the journal ledger of Beverley Country Club, entitled "Due Beverley Country Club," from Exhibit 161.

Q. Is that a true and accurate copy of the page from Exhibit 161? A. It is, sir.

Q. I show you Government's Exhibit 183 for identification and ask you to state what it is. A. This is a duplicate voucher check, Beverley Country Club, Inc. Do you want a full description?

Q. Yes—no, that is enough. Is it a true and accurate copy of the original? A. Yes, sir.

Q. And among the papers produced pursuant to the subpoena? A. Yes, sir.

Mr. MacMahon: Your Honor, the Government at this time offers Exhibits 173 for identification through 183 for identification.

The Court: Ladies and gentlemen, we will take our midafternoon recess at this point and we will consider the objections when we return.

(Recess.)

Mr. MacMahon: Your Honor, we had pending an offer in evidence.

Mr. Fennelly: 170 what?

The Court: 173 through 183.

Mr. Fennelly: Might I have a preliminary examination as to these records, as to their production, (473) to lay a foundation for my objection as to the partnership records of Beverley?

The Court: Yes, you may.

Charles B. Murphy—for Government—Preliminary Cross

Preliminary Cross Examination by Mr. Fennelly:

Q. Mr. Murphy, you personally did not produce any of these records of the Beverley Country Club of either the partnership or corporation, did you, pursuant to subpoena?

Mr. MacMahon: Your Honor, I object to the question as leading.

The Court: As what?

Mr. MacMahon: Leading.

The Court: Oh, overruled. Preliminary cross examination.

A. No, I did not. I produced my files, working files.

Q. And it was Mr. Kastel who sent the Beverley Country Club records up to the United States Court House?

The Court: Do you know anything about what Mr. Kastel did?

You may ask this witness what he did. This is not general cross examination.

Mr. Fennelly: May I ask him if he knows, your Honor?

(474) The Court: You may ask him what he knows, yes.

Q. Do you know whether or not—

The Court: Do you know anything at all about how these records came up here?

The Witness: Yes, sir, I do, because my records were sent up at the same time.

The Court: You know what happened with respect to your own records?

The Witness: Yes.